

ESTATE OF LUCY HOPE DEEPWATER
Decided March 17, 1972

IBIA 72-1 Supp.

Indian Probate: Appeal: Reconsideration

Ordinarily, a decision on appeal by the Board of Indian Appeals becomes a final Departmental decision and upon the issuance of such decision the parties are deemed to have exhausted their administrative remedies.

Indian Probate: Reconsideration

Reconsideration of a decision on appeal will not be granted except upon a showing of manifest error in such decision.

Indian Probate: Rehearing: Pleading, Timely Filing

Only the Secretary of the Interior has the authority to waive or make exceptions to the regulations setting forth time limitations for filing pleadings and, with the exception of the Board of Indian Appeals to whom he has delegated such authority, personnel of the Bureau of Indian Affairs and other employees of the Department of the Interior have no authority to waive such regulations, whether done intentionally, or inadvertently by rendering erroneous advice to a party who acts on the same to his prejudice.

ESTATE OF LUCY HOPE DEEPWATER	:	Order Denying Petition
Deceased	:	For Reconsideration
Shoshone-Flathead Allottee 1234	:	IBIA 72-1 Supp.
Probate No. F-12-71	:	March 17, 1972

This matter comes on for reconsideration upon the filing by the appellant, Daniel B. Evening, Sr., of a document entitled "Appeal" by which the appellant seeks to have this Board reconsider its decision entered herein (Estate of Lucy Hope Deepwater, 1 IBIA 202, 78

I.D. 355 (1971)), in which we affirmed the hearing examiner's Order Denying Petition For Rehearing. The primary basis for our decision was that appellant's petition for rehearing was untimely since it was filed with the examiner after the expiration of the 60-day period of limitation set forth in the applicable regulation, 25 CFR § 15.17(a). ^{1/} We also held that the examiner had no authority to waive the regulation.

In his request for reconsideration, the appellant alleges that an employee of the Bureau of Indian Affairs mistakenly advised him as to the last date upon which he could timely file his petition for rehearing. This allegation is supported by documentation attached to the petition, including an affidavit from the employee involved. However, even assuming arguendo that this contention is true it is to no avail. Personnel of the Bureau of Indian Affairs, and for that matter, other employees of the Department of the Interior, have no authority to waive the regulations, whether done intentionally, or inadvertently by rendering erroneous advice to a party who acts thereon to his prejudice. Only the Secretary and his delegate, this Board, has this authority. Estate of Jack Fighter, 71 I.D. 203 (1964). Estate of Samuel Picknoll, 1 IBIA 168, 78 I.D. 325 (1971)

^{1/} This limitation now appears in 43 CFR § 4.241(a).

Furthermore, although this Board has inherent power to rectify manifest error in its decisions, the regulations do not provide for reconsideration of our final decisions. Estate of George Minkey, 1 IBIA 56 (1970). There is some authority for the proposition that in the absence of statutory authority therefor, quasi-judicial decisions such as those rendered by this Board are not a proper subject for reconsideration, 73 C.J.S., Public Administrative Bodies and Procedure, § 156(a) (1951), and we have previously applied this rule where the circumstances warranted it. Estate of Julius Benter, 1 IBIA 59 (1971).

In any event, there is no showing of manifest error in our original decision. Indeed, in reaching such decision, we had occasion to examine the substantive merits of the allegations of the appellant and made the following observation in regard thereto:

* * * On the basis of the record before us we are unable to ascertain any truly compelling reason justifying an exception to the regulations. We have carefully reviewed the record and find that there is ample support therein for the examiner's decision to approve the will and direct distribution of the decedent's estate according to its terms. Moreover, the evidence submitted by the appellant in support of his appeal is both vague and conclusionary in nature and has neither the quality or content which we find persuasive.

Accordingly, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 211 DM 13.7; 35 F. R. 12081, the petition for reconsideration of Daniel B. Evening, Sr., is denied and our original decision entered herein on December 16, 1971, is affirmed. Since more than 60 days have elapsed since the issuance of our original decision herein, distribution of the decedent's estate should be made forthwith in accordance with the provisions of 43 CFR 4.296. This decision is final for the Department.

Michael A. Lasher, Jr.
Alternate Board Member,
Board of Indian Appeals

I concur:

David J. McKee, Chairman,
Board of Indian Appeals

Date: March 17, 1972